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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 72-790

STATE OF ALABAMA AND
W. S. FURLOW, WARDEN,
PETITIONERS

VS.

WILLIAM G. BRINKS,
RESPONDENT

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY MEMORANDUM

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The respondent argues that an accused person may not be put to trial if he is insane and that the State must have adequate procedures to determine an accused's competence to stand trial. The first point has already been raised by the petitioners. See page 14 of the petition. The State concedes the second point if "adequate procedure" means "adequate hearing." *Pate v. Robinson*, 383 U.S. 375, 15 L. Ed. 2d 815, 86 S. Ct. 836 (1966). However, the petitioners have discovered no authority for the proposition that an

adequate hearing on the competency of an accused to stand trial must under the Constitution include a jury determination of the accused's sanity. Indeed, it would appear that from the points of view of expertise and objectivity a learned trial judge would be more competent to pass on this highly technical and often volatile issue than a jury drawn at random from the community.

The respondent suggests that this case is identical to *Pate v. Robinson* (383 U.S. 375, 15 L. Ed 2d 815, 86 S. Ct. 836 [1966] [supra]). This suggestion cannot, however, survive an even cursory reading of *Pate*. The whole point of *Pate* was that Pate's rights under the Constitution of the United States (Not under Illinois statutes) were violated by the failure of the Illinois trial court to conduct a hearing on Pate's competency to stand trial under the circumstances of that case. In the respondent's case a hearing was held, and the necessary implication of the trial judge's denial of the respondent's motion for an investigation of his sanity was that the trial court found no reason to doubt the respondent's sanity. This finding has been subsequently reviewed by a State appellate court, a Federal trial court and a Federal appellate court, and none of these courts have seen fit to seriously question it. Even the Honorable Court below found the evidence before the Alabama trial judge to be of "an ambiguous nature." *Brinks v. Alabama* (5th Cir., 1972) 465 F. 2d 446, 448.

The respondent also apparently argues that the plain words of Title 15, Section 426, Code of Alabama, 1940 (recomp. 1958) give him the right conferred on him by the Honorable Court below. However, the relevant language of this statute is "If . . . the trial court shall have reasonable ground to doubt his sanity. . . .". See Appendix "E" to the

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petition, page 40. These words are susceptible to the interpretation that the doubt must in fact reside in the trial judge. This would be a subjective standard rather than the objective standard which the Honorable Court below applied. The Alabama Courts have applied this subjective standard. Whether this interpretation is good or bad policy is a question for the Alabama Courts, and they have not seen fit to change their policy since 1913. See again the cases cited at pages 14-15 of the petition. And, the Alabama Legislature reenacted the statute in the same words in 1923, 1928 and 1940.

The brief in opposition did not address the issue of whether the Honorable Court below erred in revising the Alabama interpretation of this Alabama statute; therefore, the petitioners will rest on their petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, one of the attorneys for the petitioners and a member of the Bar of the Supreme Court of the United States, hereby certify that on this _____ day of December, 1972, I did serve the requisite number of copies of the foregoing Petitioners' Reply Memorandum on the attorney for the respondent by mailing said copies to him, postage prepaid, and addressed as follows:

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